



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/157086

PRELIMINARY RECITALS

Pursuant to a petition filed March 05, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Washington County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on April 15, 2014, at West Bend, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$200 for the period of November, 2013 – February 28, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Ken Benedum

Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County. He is disabled.
2. On August 28, 2013, the Petitioner submitted medical expenses for eye care and prescriptions. These were expenses the Petitioner incurred during the current certification period which would

end on September 30, 2013. The agency averaged the medical expenses over 6 months of the next certification period beginning with his October FS budget. This resulted in an increase in FS benefits of \$200 for October, 2013 and \$189/month from November, 2013 – February, 2014.

3. Petitioner has Social Security income of \$833/month and rent expense of \$397.50/month.
4. On February 14, 2014, the agency issued a Notice of Decision to the Petitioner informing him that his FS benefits would decrease to \$136/month effective March 1, 2014. This was due to the agency discontinuing the medical expense deduction.
5. On March 17, 2014, the agency issued a Notification of FS Overissuance to the Petitioner informing him of the agency's intent to recover an overissuance of FS benefits in the amount of \$200 for the period of November 1, 2013 – February 28, 2013.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), see also, FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also, FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. *Id.*

"Discovery" is "the date that the ESS [agency] became aware of the potential that an overissuance may exist." BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012). In this case, the agency became aware of a potential for an overissuance in March, 2014 when the agency discovered it had improperly budgeted the Petitioner's medical expenses in the next certification period. The agency concedes it was an agency error in budgeting. Because it was agency error, the agency may seek to recover for an overpayment within 12 months prior to the discovery.

The agency relies on the FS regulations and handbook regarding the budgeting of medical expenses. Previously acquired medical expenses that are not yet paid and current payments during the certification period are allowed when calculating a medical expense deduction. Past unpaid medical bills can be used to prospectively budget recurring medical expenses at application or recertification. Medical expense payments made during the certification period are allowable. Medical expenses paid prior to the certification period are not allowable. FoodShare Handbook (FSH) § 4.6.4.1.

Medical expenses for elderly, blind, or disabled members may be entered through one of the following budgeting methods:

- Budgeted as a recurring monthly expense,
- Budgeted as a one time lump sum expense for one month,
- Budgeted for the remainder of a FS certification period,
- Budgeted based on the terms of a payment plan, or
- Averaged over the time period a one-time medical expense was intended to cover (such as a prepaid or met medical deductible).

The averaging of the one time medical expense cannot extend past the certification period in which the expense was originally counted. FSH § 4.6.4.3.

In this case, the agency used one time medical expenses that were paid by the Petitioner in the next certification period and averaged those costs over 6 months. Because the expenses were incurred, paid and submitted during the Petitioner's certification period that ended on September 30, 2013, the expenses should have been used for that certification period and would have affected the Petitioner's September, 2013 benefits.

The agency noted that the Petitioner should have received the medical expense deduction in September and he should have received the maximum of \$200 of FS benefits for September, 2013 but instead he received the maximum of \$200 for October, 2013. Therefore, the agency did not start the overpayment period until November, 2013. The corrected budget accurately shows the Petitioner's allotment without the medical expense deduction. The worksheets accurately demonstrate the amount of the overpayment.

The Petitioner argued at the hearing that he should not be responsible for the agency's error. I note that he is not responsible for the error but he received benefits to which he was not entitled and the agency is required by the regulations to recover the amount that was issued in error. Therefore, based on the evidence, I conclude that the agency properly seeks to recover an overissuance of FS benefits in the amount of \$200 for the period of November 1, 2013 – February 28, 2014.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of FS benefits in the amount of \$200 for the period of November 1, 2013 – February 28, 2014.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 28th day of April, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 28, 2014.

Washington County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability